

**BEFORE THE QUEENSTOWN LAKES**  
**DISTRICT COUNCIL**

**IN THE MATTER** of the Resource Management Act  
1991

**AND** in the matter of the Queenstown Lakes  
Proposed District Plan

**AND** in the matter of Hearing Stream 14 – Wakatipu  
Basin

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**REPLY SUBMISSIONS FOR MIDDLETON FAMILY TRUST -  
APPLICATION TO STRIKE OUT FURTHER SUBMISSION FROM  
TUCKER BEACH RESIDENTS**

**Dated this 6<sup>h</sup> day of August 2018**

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**MACALISTER TODD PHILLIPS**

Barristers, Solicitors, Notaries  
3<sup>rd</sup> Floor, 11-17 Church Street  
Queenstown 9300  
P O Box 653, DX ZP95001, Queenstown 9348  
Telephone: (03) 441 0125 Fax: (03) 442 8116  
Solicitor Acting: Jayne Macdonald

MAY IT PLEASE THE COMMISSIONERS

**Is there an unincorporated body of persons capable of being a “person” for the purposes of the further submission (“FS”)?**

**Body of persons**

1. The Tucker Beach Residents (“TBR”), submit that at the time of filing the FS, it was an “unincorporated body of persons”, comprising residents of Tucker Beach and surrounds who had agreed to file a submission.
2. As will be discussed below, TBR produces insufficient evidence to substantiate those claims.
3. In defining a “person”, Section 2 of the Act refers to a “body” of persons comprised in an unincorporated group. By definition, there must be more than one person in the group.
4. While the name on the submission form is stated to be *Tucker Beach Residents*, further consideration of the ‘form’ of the submission is instructive. It uses the singular “I”, rather than the plural “we” as would otherwise be expected of a submission made on behalf of a body of persons. When explaining the grounds for being a person who has an interest in the proposal greater than the public in general it says, “I own land affected by the submission”.
5. TBR submit that there is no case law to support a requirement that there be a meeting held between members to establish a common purpose and intention to move in concert. While that is accepted, the fact of a meeting held is evidence of satisfaction of the common purpose and intention to move in concert, and is not an uncommon occurrence for members of an unincorporated group such as thus.
6. In fact, the TBR can point to no common purpose of organised effort at all by persons *other than* Mr Hodgson, who appears to have been the person who gave instructions for the FS to be prepared and filed. It is submitted that more is required than that.

7. TBR submission attaches a copy of an e-mail exchange timed at 8.36pm on 17 May 2018, the evening of the date of lodgement of the FS. It contains a statement that Mr Hodgson has been in contact with a “Vicki Summer” and she is on board as one of the TBR “along with others”.
8. There is no evidence of who these others are, or when the contact with Ms Summer was, or the nature of it. While as above, it might be taking it too far to require a meeting to establish a common purpose, the “evidence” produced by TBR falls well short of the requirements to establish the “fact” of a group of residents who had **agreed** to move in concert.
9. Furthermore, the e-mail produced by TBR is not sufficient evidence that the requisite intent or agreement was formed prior to the FS submission being lodged.
10. It is submitted that what the “evidence” for TBR does show is a last minute effort on the part of Mr Hodgson to rally the support of neighbours under the guise of a residents group. There is no evidence of an organised effort, or agreement to move forwards as a group prior to the lodgement of the FS. Rather, that appears to have occurred after the submission was lodged, as can be seen in the fact of incorporation of the residents group, and the fact of a number of late further submissions that were filed.
11. It is submitted that there is insufficient evidence for TBR to qualify as a person, and therefore be capable of having standing to lodge a FS.

**Does Tucker Beach Residents Society Inc meet the requirements to be a successor?**

12. The majority of cases considering the issue of succession have a similar fact scenario whereby there are a number persons who have filed individual submissions, who then seek to form an incorporated society “to step into the shoes” of those who commenced participation as individuals.

13. That is not the factual scenario here. There is one FS purporting to be made on behalf of an unincorporated group. In such circumstances, it is submitted the only test that requires satisfaction is whether the successor is composed of substantially the same members.
  
14. The qualifying counting membership of the predecessor should be calculated at the date which the last action is taken under the RMA (the lodging of the FS)<sup>1</sup>. At best, the evidence for TBR is that it was constituted of two members at the time the FS was filed. While these two members are members of the incorporated society, upon incorporation, the membership of the corporate entity was not comprised of substantially the same members as its predecessor. Out of 15 members on incorporation, only two are members of the unincorporated group. This is well below the threshold of “substantial”.
  
15. What it represents is not “one group” who have moved in concert, for a common purpose and therefore should have the benefit of taking over the FS, but two different groups comprised of substantially different persons. The grounds for succession have not been met.

### **Prejudice and no rights of participation**

16. As noted in the minute recording the reasons refusing to hear the evidence of Mr Healy on the part of the TBR<sup>2</sup>, the legal submissions made for the TBR were also made for Mr James Muspratt (FS 2714). The TBR retain the ability to participate in the process through Mr Muspratt’s further submissions, which to all intents and purposes appears to be aligned with the concerns of the TBR.



Jayne Macdonald

Counsel for the Middleton Family Trust

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<sup>1</sup> Gold Mine Action Incorporated v Otago Regional Council C51/2002

<sup>2</sup> At paragraph 10  
JEM-414352-11-51-V1:JEM